

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
GENERAL ELECTRIC COMPANY	:	DETERMINATION
for Redetermination of a Deficiency or for	:	
Refund of Franchise Tax on Business Corporations under	:	
Article 9-A of the Tax Law for the	:	
Years 1979, 1980 and 1981.	:	

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Petitioner, General Electric Company, 1 River Road, Schenectady, New York 12345, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the years 1979, 1980 and 1981 (File No. 64999).

On May 1, 1987, petitioner, through its duly authorized representative, waived a hearing in the Division of Tax Appeals and agreed to submit the case for determination based on the Division of Taxation file, a stipulation of facts and additional information to be submitted by July 15, 1987. After due consideration of the record, Arthur S. Bray, Administrative Law Judge, hereby renders the following determination.

ISSUE

Whether the Audit Division properly determined that the research and development credit did not apply to property acquired, constructed, reconstructed, or erected prior to June 30, 1982.

FINDINGS OF FACT

1. Petitioner, General Electric Company, filed a New York State Combined Franchise Tax Report for the year 1981. On this report, petitioner claimed a research and development credit in the amount of \$1,187,914.00 for property acquired during the year 1981. 2. On July 17, 1985, the Audit Division issued three notices of deficiency to petitioner, General Electric Company, which asserted deficiencies of corporation franchise tax under Article 9-A of the Tax Law for the years 1979, 1980 and 1981 for taxes due of, respectively, \$687,604.00, \$745,146.00 and \$2,167,608.00.

3. At a pre-hearing conference all issues but one were resolved. On June 4, 1986 petitioner withdrew its petition as to the resolved issues, agreeing to pay \$198,213.00 in tax, together with \$165,236.00 in interest, for a total of \$363,449.00. Petitioner paid the amount agreed to of \$363,449.00 at the time of its partial withdrawal of petition.

4. The only issue remaining in dispute involves the research and development tax credit provided for by Tax Law § 210.18, and this issue is present only in the year 1981. The disagreed portion of tax, in the principal amount of \$1,187,914.00, is entirely attributable to the research and development credit issue. Petitioner maintains that there was a clear legislative mandate that the research and development credit apply to qualified property placed in service after December 31, 1980. The Audit Division maintains that Tax Law § 210.18(a) limits the credit to property acquired, constructed or reconstructed, or erected after June 30, 1982. There is no dispute over the amount of tax in issue.

#### CONCLUSIONS OF LAW

A. That section 14 of Chapter 103 of the Laws of 1981 added Tax Law § 210.18. Originally, this section provided as follows:

"(a) A taxpayer shall be allowed a credit against the tax imposed by this article....The amount of the credit shall be ten percent of the cost or other basis for federal income tax purposes of tangible personal property, and other tangible property, including buildings and structural components of buildings, described in paragraph (b) of this subdivision; acquired, constructed or reconstructed, or erected after June thirtieth, nineteen hundred eighty-two.

(b) A credit shall be allowed under this section with respect to tangible personal property and other tangible property, including buildings and structural components of buildings which are: depreciable pursuant to section one hundred sixty-seven of the internal revenue code, have a useful life of four years or more, are acquired by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code, have a situs in this state and are used or are to be used for purposes of research and development in the experimental or laboratory sense."

B. That section 184 of chapter 103 of the Laws of 1981 provided that section 14 of said chapter applied to investments made on or after July 1, 1982.

C. That section 7 of chapter 55 of the laws of 1982 amended Tax Law § 210.18(b), in part, by the addition of the following emphasized language:

"A credit shall be allowed under this section with respect to tangible personal property and other tangible property, including buildings and structural components of buildings which are: depreciable pursuant to section one hundred sixty-seven of the internal revenue code or recovery property with respect to which a deduction is allowable under section one hundred sixty-eight of the internal revenue code, have a useful life of four years or more, are acquired by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code, have a situs in this state and are used or are to be used for purposes of research and development in the experimental or laboratory sense."

D. That section 96 of chapter 55 of the laws of 1982 provided that the section quoted in Conclusion of Law "C" applied to property placed in service after December 31, 1980 in taxable years ending after that date.

E. That, if possible, every word in a statute should be given meaning and effect (Statutes § 231). So construed, it is clear that the research and development credit applies to property acquired after June 30, 1982. The purpose of the amendment to Tax Law § 210.18(b) was to permit the research and development credit on recovery property on which a deduction was allowable under Internal Revenue Code § 168.

F. That the petition of General Electric Company is denied and the Notice of Deficiency, dated July 17, 1985, is sustained.

DATED: Albany, New York  
September 18, 1987

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ADMINISTRATIVE LAW JUDGE